

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion
Into the Operations and Practices of Pacific Gas
and Electric Company; Notice of Opportunity for
Hearing; and Order to Show Cause Why the
Commission Should Not Impose Fines and
Sanctions For the December 20, 2003 PG&E
Mission Substation Fire and Electric Outage
Pursuant to Public Utilities Code Section 451.

Investigation 05-03-011
(Filed March 17, 2005)

ASSIGNED COMMISSIONERS SCOPING MEMO AND RULING

Summary

Pursuant to Rules 6(c) and 6.3 of the Commission's Rules of Practice and Procedure¹, this ruling sets forth a preliminary procedural schedule, assigns a presiding hearing officer, and addresses the scope of the proceeding following a prehearing conference (PHC) held before the assigned Administrative Law Judge (ALJ) on April 11, 2005.

Background

The Commission opened this Order Instituting Investigation (OII) following the conclusion of independent investigations into the December 20, 2003 fire at the Pacific Gas and Electric Company (PG&E) Mission Substation by

¹ All subsequent references to a "Rule" mean a rule found within the Commission's Rules of Practices and Procedure, codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations, and all citations to sections refer to the Public Utilities Code.

the Commission's Consumer Protection and Safety Division (CPSD) and by PG&E.

Both investigations into the 2003 fire also examined the causes of an earlier fire at Mission Substation, in 1996. More recently, on March 26, 2005, a third fire broke out at Mission Substation.

Scope of the Proceeding

The OII's Ordering Paragraph 5, which references other ordering paragraphs and the body of the OII, serves as the preliminary scoping memo required by Rule 6(c). The OII raises two issue groups.

The first issue group is whether PG&E should be found in violation of Pub. Util. Code § 451 and assessed a penalty for "allowing an unsafe condition to exist at the Mission Substation, which led to an electrical fire and catastrophic power outage on December 20, 2003." (OII, Ordering Paragraph 2.) The second is whether the Commission should order "changes to PG&E's maintenance, operations, or construction standards ... to improve and ensure system-wide safety and reliability." (*Id.*, Ordering Paragraph 3.)

In reaching its determinations on the § 451/penalty issues, the Commission will consider two existing investigative reports on the 2003 Mission Substation fire: PG&E's Event Report, dated August 20, 2004 and CPSD's Outage Report, dated October 20, 2004. A third report, due from PG&E on May 20, 2005, will describe the conditions at PG&E's other indoor substations since 1996 and detail any improvements made since 2003. Because another fire broke out at Mission Substation only days after the Commission issued this OII, the May 20 status report should also detail conditions at Mission Substation between December 20, 2003 and March 26, 2005. The Commission will consider this portion of the status report in its deliberations on the § 451/penalty issues. The Commission will

consider all three reports in assessing whether to order prospective changes at PG&E's indoor substations.

Potential for Settlement

We urge the parties to seriously explore whether a mutually acceptable settlement of this matter is possible, either in whole or in part, after assessing the risks and costs of litigation and the strengths and weaknesses of their own positions. At a minimum, since the two investigations into the causes of the 2003 fire have been completed, the parties should explore the possibility of a joint stipulation of facts on many (if not all) of the § 451 issues.

The Administrative Law Judge Division may be able to provide the parties with a trained mediator, should they reach a mutual determination that mediation might assist them in reaching agreement. If the parties desire the services of a mediator, they should contact the assigned Administrative Law Judge (ALJ) by email (xjv@cpuc.ca.gov) as soon as practicable and the ALJ will convey that request to the Assistant Chief ALJ who administers the mediation program.

Exhibits – Preliminary Identification; Confidential Status

The ALJ has reserved the following blocks of exhibit numbers for use at hearing: CPSD, 1-99; PG&E, 100-199. Within this numbering scheme, the following documents have been assigned exhibit numbers for identification purposes: CPSD's October 20, 2004, Outage Report -- Ex. 1; PG&E's August 20, 2004, Event Report -- Ex. 100. Ex. 101 has been reserved to identify PG&E's May 20, 2005 status report.

The two reports marked for identification as Ex. 1 and Ex. 100 have been provided to the ALJ under the confidentiality protections inherent in § 583. It is anticipated that both reports, as well as the May 20 status report (the future Ex. 101), will constitute the primary evidence in this proceeding. If the parties

seek to have portions of these reports sealed within the evidentiary record, they will need to meet established requirements for protection from public disclosure and should submit appropriate motions, accompanied by declarations or affidavits as necessary.²

Schedule

The following schedule will apply. If the parties settle some or all of the issues in this proceeding, they should contact the ALJ as soon as practicable so that the schedule may be revised appropriately.

April 25, 2005	Prepared testimony of CPSD witness sponsoring Ex. 1 served.
May 20, 2005	Prepared testimony of PG&E witness(es) rebutting Ex. 1 and/or sponsoring Ex. 100 served; PG&E Ex. 101 served, together w/ sponsoring prepared testimony.
June 3, 2005	CPSD reply prepared testimony on Ex 1/Ex. 100 issues.
June 30, 2005, 10 a.m.	2nd PHC.
July 15, 2005	CPSD initial prepared testimony on Ex 101 issues & penalty recommendation on Ex.1/Ex.100 issues.
August 19, 2005	PG&E rebuttal prepared testimony on Ex. 101 issues & penalty recommendation on Ex.1/Ex.100 issues.

² See, for example, *Interim Opinion Granting Petition for Modification and Denying Motion to Dismiss but Modifying OII for Greater Clarity* [Interim Opinion in re Cingular Wireless], pp.4-7, slip op., which discusses the Commission's General Order 66-C.

August 31, 2005	CPSD reply prepared testimony on Ex. 101 issues & penalty recommendation on Ex.1/Ex.100 issues.
September 7, 2005, 9 a.m.- 3:30p.m, to be continued through September 16, as necessary.	Evidentiary hearing in Commission courtroom, San Francisco.
September 7, 2005	Joint motion, requesting that Commission maintain unredacted portions of specified exhibits under seal, filed.
October 14, 2005	Concurrent opening briefs filed.
November 14, 2005	Concurrent opposition briefs filed.
November 22, 2005	Concurrent reply briefs filed; submission.
Within 60 days of submission	Presiding officer's decision (POD) filed (Pub. Util. Code § 1701.2(a).

It is our goal to close this case within the 12-month timeframe for resolution of adjudicatory proceedings, under Pub. Util. Code § 1701.2(d). At this point, we see no reason that timeline cannot be followed.

Preparation of Exhibits and Procedures at Evidentiary Hearing

Parties must follow the Commission's Rules, as modified or clarified by the ALJ's directives in Appendix A to this ruling. Procedural questions may be addressed to the ALJ (xjv@cpuc.ca.gov) or the Commission's Public Advisor.

Category of Proceeding and Need for Hearing

This ruling affirms the OII's preliminary determinations that this proceeding should be categorized as an adjudication and set for hearings.

Assignment of Presiding Officer

ALJ Jean Vieth will be the presiding officer at hearings.

Ex Parte Rules

Ex parte communications are prohibited in adjudicatory proceedings under Pub. Util. Code § 1701.2(b) and Rule 7.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.
3. The presiding officer will be Administrative Law Judge Vieth.
4. This ruling confirms that this proceeding is an adjudication.
5. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

Dated April 19, 2005, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

/s/ SUSAN P. KENNEDY

Susan P. Kennedy
Assigned Commissioner

APPENDIX A: EXHIBITS

Preparation of Prepared Testimony

See Article 17 of the Commission's Rules of Practice and Procedure for various requirements (Rule 68--need for subject index; Rule 70--exhibit size; etc.). For the purposes of ascertaining whether a subject index is required, include the individual pages of any attachment(s) in the total page count. A subject index should identify all such attachments, as well as the sections/subsections within the prepared testimony. Generally, prepared testimony should be bound with any attachments to it, unless size considerations warrant a different practice. To facilitate reference, please separately tab each attachment to prepared testimony.

Formatting requirements:

- 1) **The upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp.** (Rule 70.) This applies to prepared testimony as well as other exhibits—if there is insufficient room in the upper right hand corner for an exhibit stamp, prepare a cover sheet for the exhibit. If a party “premarks” an exhibit in **any** way, it should **not** do so in the upper left hand corner of the cover sheet.
- 2) If any exhibit *provided to the ALJ in the hearing room* consists of more than one page, the **pages should be bound together** or otherwise fixed in a secure fashion (e.g. brads, acco fasteners, velo binding). **Do not use a loose-leaf binder** for this purpose--if dropped, the pages may fall out.

Service of Exhibits

One copy of all prepared testimony should be served on the ALJ, and unless otherwise arranged, on all appearances and state service on the service list, as well as on the Assigned Commissioner's office. Prepared testimony should **not** be filed with the Commission's Docket Office.

Corrections to Exhibits

Minor corrections: only minor corrections to an exhibit may be made orally from the witness stand.

Major corrections: all corrections that are not minor should be made in advance of hearings, in writing, and distributed to the ALJ and other parties in order to provide timely notice.

- 1) Corrections should use “redline” format conventions which permit comparison of the original and revised text (i.e. line out or strikeover the original text being deleted; clearly indicate, in a readily distinguishable manner, the substitute or additional text).
- 2) Each corrected page should be marked with the word “revised” and the revision date.
- 3) Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. (Example: Exhibit 2-A is the first correction made to Exhibit 2.) Corrections to exhibits with multiple sponsors will also be identified by chapter number. (Example: Exhibit 5-2-B is the second correction made to Chapter 2 of Exhibit 5, where different witnesses sponsor chapters 1 and 2.)

Identification of Exhibits in the Hearing Room

Number of copies:

- 1) *Prepared testimony*--the sponsoring party should provide **one copy to the ALJ and one to the court reporter**, and have at least 5 copies available for distribution to parties present in the hearing room.
- 2) *Other exhibits*—the sponsoring party should provide **two copies to the ALJ and one to the court reporter**, and have at least 5 copies available for distribution to parties present in the hearing room. (This directive supersedes Rule 71.)
- 3) *Confidential exhibits*— at least one of the copies provided to the ALJ must be in an **unsealed envelope** measuring no more than 10” by 13.”

Premarking Exhibit #s: At the discretion of the ALJ, a block of exhibit numbers may be reserved for each party. A party that “premarks” exhibits with numbers generally should plan to use them at hearing in consecutive numerical order, however.

Cross-examination With Exhibits

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced.

Exception: A party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.

Confidential documents: If parties have agreed to consult prior to disclosure, as in the case of **confidential documents**, they should do so before using the documents in cross-examination, unless a different procedure regarding confidential documents has been arranged in advance with the ALJ.

(End of Appendix A)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioners Scoping Memo and Ruling on all parties of record in this proceeding or their attorneys of record.

Dated April 19, 2005, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or

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(415) 703-5282 at least three working days in advance of the event.